

State of Utah DEPARTMENT OF NATURAL RESOURCES DIVISION OF OIL, GAS AND MINING

Norman H. Bangerter Governor Dee C. Hansen Executive Director Dianne R. Nielson, Ph.D. Division Director

355 West North Temple 3 Triad Center, Suite 350 Salt Lake City, Utah 84180-1203 801-538-5340

January 14, 1991

Mr. Steve E. Clyde, Esq. Clyde, Pratt and Snow 200 American Savings Plaza 77 West 200 South Salt Lake City, Utah 84101

Dear Mr. Clyde:

Re: Informal Hearing, Jumbo Mining Company, M/027/007, Drum Mine, Millard County, Utah

Enclosed is the Order in the informal hearing regarding the above-referenced Request for Informal Agency Action. As noted in the Order, an appeal of the Division Order is timely if filed by 5:00 p.m. January 24, 1991.

Thank you for your assistance in this matter and for your participation and that of Mr. King in the informal hearing. If you have any questions, please contact me.

Best regards,

Dianne R. Nielson

Director

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cc. E. B. King, Jumbo Mining Co.

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STATE OF UTAH DEPARTMENT OF NATURAL RESOURCES DIVISION OF OIL, GAS AND MINING

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IN THE MATTER OF THE REQUEST FOR INFORMAL AGENCY ACTION AS

ORDER

FOR INFORMAL AGENCY ACTION AS FILED BY JUMBO MINING COMPANY, DRUM MINE, MILLARD COUNTY, UTAH

CAUSE NO. M/027/007

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This matter was the subject of a conference call on November 11, 1990, between the parties, the Assistant Attorney General for the Division and the Director, and an informal hearing before the Director of the Division of Oil, Gas and Mining on Friday, Hovember 30, 1990, at 10:00 a.m. in the office of the Division of Oil, Gas and Mining, 3 Triad Center, Suite 350, 355 West North Temple, Salt Lake City, Utah 84180-1203.

The following individuals were present and participated in the informal hearing:

Presiding:

Dianne R. Nielson, Director Division of Oil, Gas and Mining

For the Petitioner, Jumbo Mining Company:

Steven E. Clyde, Attorney Clyde, Pratt and Snow, P.C. Salt Lake City, Utah

E. B. King, President Jumbo Mining Company

For the Respondent, Western States Minerals Corporation:

James R. Haisley, Attorney Davis, Graham and Stubbs Denver, Colorado

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> Richard Westfall, Attorney Davis, Graham and Stubbs Denver, Colorado

For the Division:

Thomas A. Mitchell, Assistant Attorney General State of Utah

Lowell P. Braxton, Associate Director of Mining

D. Wayne Hedberg, Permit Supervisor Minerals Regulatory Program

For the Bureau of Water Pollution Control, Division of Environmental Health:

Dave Rupp

For the Bureau of Land
Management
Richfield, Utah Office:

Michael Jackson

NOW THEREFORE, the Division of Oil, Gas and Mining (Division), having fully considered the Petition and Responses of the parties, as filed prior to and during the informal hearing, as well as the previous actions of the Division and Board of Oil, Gas and Mining, as represented in Division records, now makes and enters its Order as follows:

FINDINGS OF FACT

- 1. The Informal Hearing was properly scheduled and noticed in accordance with the Utah Administrative Procedures Act (UCA 63-46b-1 et seq.) and the Mined Land Reclamation Act (UCA 40-8 et seq.).
- 2. On July 7, 1989, the Board of Oil, Gas and Mining (Board) approved the form and amount of surety for a portion of the Drum

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Mine, as transferred from Western States Minerals Corporation (Western States Minerals) to Jumbo Mining Company (Jumbo Mining). The Chairman of the Board and the Director of the Division executed the Reclamation Contract on August 4, 1989. The Reclamation Contract establishes a surety amount of \$162,000 (1994 dollars), which was posted by Jumbo Mining. The Reclamation Contract references the disturbed area, including a legal description and a map (last updated July 26, 1989) entitled Exhibit A. The contract and map indicate that the leach pads which are the subject of this informal hearing, Low Grade Heap No. 2 (Heap No. LG2) and High Grade Heap No. 7 (Heap No. 7) were not bonded for reclamation by Jumbo Mining under the terms of the above-referenced Reclamation Contract. The reclamation responsibility for Heap No. LG2 and Heap No. 7 remained with Western States Minerals.

- 3. On August 4, 1989, the Division approved a permit transfer for a portion of the Drum Mine, as transferred from Western States Minerals to Jumbo Mining. That transfer was also executed by Western States Minerals (July 6, 1989) and Jumbo Mining (July 10, 1989). That transfer includes Conditions of Transfer and a map, last updated July 26, 1989 (Appendix A). The transfer document and map indicate that the leach pads in question (Heap No. LG2 and Heap No. 7) were not subject to the permit transfer to Jumbo Mining. Western States Minerals continues to be the permittee of record with respect to Heap No. LG2 and Heap No. 7, including responsibility for releamation and maintenance of reclamation surety, which is held by the Division.
- 4. On November 27, 1989, the Bureau of Water Pollution Control conditionally approved Jumbo Mining's plan to conduct 60-day tests of leach pads. The Division of Environmental Health, Bureau of

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Water Pollution Control (Bureau) required certain tests be conducted and certain construction and discharge permits be obtained prior to the operation of the heap leach pads. The tests and permits have not been ordered as part of any compliance action with respect to Heap No. LG2 and Heap No. 7. The tests and permits are required only if Jumbo Mining, or any party, elects to conduct operations utilizing the leach pads.

- 5. The Division responded to Jumbo Mining's heap leach proposal by letters dated February 28, 1990, May 31, 1990, and July 12, 1990, informing Jumbo Mining Company that leach testing of Heap No. LG2 and Heap No. 7 constituted a "mining operation." Testing could proceed only with 1) written permission of Western States Minerals, or 2) an approved amendment of its permit, including revision of the original permit transfer document, and updating of reclamation surety to include Heap No. LG2 and Heap No. 7.
- 6. By letter received at the Division office July 25, 1990, from Jumbo Mining, a revised Transfer of Notice of Intention (permit transfer) which included Heap No. LG2 and Heap No. 7 was submitted. The cover letter informed the Division of Jumbo Mining's intent to increase its reclamation surety by \$24,100 to cover the increased leclamation responsibility for the additional disturbed area included in the transfer.
- 7. By letter dated July 27, 1990, the Division was informed that the State Treasurer certified a deposit valued at \$183,032. This surety was posted to cover reclamation related to Jumbo Mining Company's July 25, 1990, revised transfer submittal.

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8. "Mining operation" is defined in the Mined Land Reclamation Act (Section 40-8-4(8)(a), Utah Code Annotated):

"Mining operation" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground mining and in site mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.

- 9. Jumbo Mining has proposed to and attempted to conduct leak tests on Heap No. LG2 and Heap No. 7. As stated in Jumbo Mining's Petition for Commencement of Informal Proceedings, dated October 19, 1990, pp. 3-4, the tests consist of:
 - "...drill(ing) approximately ten test wells around the perimeter of these heaps, and to have test holes logged before and after testing by neutron and gamma methods, and to submit various geological maps, etc. The heaps were then to be sprinkled with available solutions for a minimum of 60 days, and all test wells were to be logged again to determine if increased moisture could be detected in the test wells."
- 10. Jumbo Mining desires to permit Heap No. LG2 and Heap No. 7, "for continued use for the limited ore reserves which are currently known to remain in the area." (Petition for Commencement of Informal Proceedings, dated October 19, 1990, p. 3).
- 11. Western States Minerals has not signed the Transfer referenced in paragraph 6, above.

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- 12. The Division has not recommended to the Board and the Board has not considered or approved the form and amount of surety referenced in paragraphs 6 and 7, above.
- 13. The Division has not approved the permit transfer referenced in paragraph 6, above.
- 14. Jumbo Mining Company is not permitted or bonded by the Division or the Board to conduct any mining operation on Heap No. LG2 or Heap No. 7 at the Drum Mine.

CONCLUSION OF LAW

- 15. The conduct of "leak tests" as described in Jumbo Mining's Petition for Commencement of Informal Proceedings, dated October 19, 1990, constitutes a "mining operation" under Section 40-8-4(8)(a), Utah Code Annotated.
- 16. Western States Minerals has not given written permission for leak tests to be conducted on Heap No. LG2 and Heap No. 7.
- 17. In accordance with Sections 40-8-7(1)(g) and 40-8-19, Utah Code Annotated, Jumbo Mining has failed to provide necessary and complete documentation, including but not limited to documented approval of Western State Minerals for the transfer of Heap No. LG2 and Heap No. 7, which would enable the Division to make a determination regarding the Transfer of Notice of Intent regarding Heap No. LG2 and Heap No. 7 and posting of the related surety.

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18. Jumbo Mining is not authorized under Title 40 Chapter 8 of the Utah Code Annotated to conduct leak tests on Heap No. LG2 and Heap No. 7.

ORDER

- 19. The Action of the Division, notifying Jumbo Mining Company that it is not authorized to conduct leak tests on Heap No. LG2 and Heap No. 7, is appropriate and is reaffirmed.
- 20. Jumbo Mining Company is not permitted to conduct "mining operations" on Heap No. LG2 and Heap No. 7.
- 21. In accordance with the rules of the Board in R613-005-106.17, any party may file an appeal of this Division Order by a Request for Agency Action for a formal hearing. The Request must be filed in writing with the Board within ten (10) days of issuance of this Order.

ORDERED and issued this 14th day of January, 1991

STATE OF UTAH DIVISION OF OIL, GAS AND MINING

Dianne R. Nielson

Director